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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,293	08/18/2003	Ted Marchildon	0120 0009	2002
7590	04/07/2005		EXAMINER	
David J. McGruder OYEN WIGGS GREEN & MUTALA #480 - 601 West Cordova Street Vancouver, BC V6B 1G1 CANADA			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 04/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/642,293	MARCHILDON, TED	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 February 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2-7 and 11-16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,8-10 and 17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 June 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 2/10/05.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,8-10,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sparkes (US 5515648) in view of Roberts (US 5097627).

For claims 1 & 17, Sparkes teaches a rotary hydroponic plant growing machine comprising a cylindrical structure 1,16 for holding plant containers; a base 3,4; means for rotating 14,M the cylindrical structure on the base; a light 17 inside the cylindrical structure; and means 26,27 for watering the plants in the containers as the structure rotates, the structure comprises a circumferential surface which defines a plurality of openings 20 along the cylindrical structure to receive plant containers 21. However, Sparkes is silent about the cylindrical structure having slots that allow slidable movement of the containers in a direction parallel to the axis of the cylindrical structure.

Roberts teaches a hydroponic system comprising a plant holding structure 8 having longitudinal slot (fig. 5, ref. 80) to receive plant containers 32, the slot is configured to allow one to slide the container in a direction parallel to the entire length of the structure . It would have been an obvious substitution of functional equivalent to substitute the opening along the cylindrical structure of Sparkes to hold plant containers with the slot along the structure of Roberts to hold plant containers, since both types of

holding system would perform the same function to allow a user to remove the plant containers from the structure.

For claims 8-10, in addition to the above, Robert teaches plant containers 32 having flanges 82 that slide into openings 79,82 of the plant holding structure 8 for sliding engagement of the containers 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include plant containers with flanges and openings as further taught by Roberts in the plant holding structure of Sparks as modified by Roberts in order to, not only allow sliding engagement of the structure and containers, but also to secure the plant containers in position by connecting the flanges in the openings.

Response to Arguments

3. Applicant's arguments with respect to claims 1,8-10 have been considered but are moot in view of the new ground(s) of rejection. However, argument pertaining to Roberts will be addressed herein since Roberts was relied upon in the rejection above.

Applicant argued that Roberts teaches pitch screw 26 contained within a screw housing 28 which is rotated by a chain drive system 60 to move plants 34 and holders 32. This arrangement teaches away from “slots configured to allow slidable movement”. In addition, Roberts does not teach a rotary plant growing apparatus.

Clearly from fig. 5 of Roberts that one can see a holding structure 8 having slot (at ref. 80) to slidably hold plant containers 32. Pitch screw 26 serves to move the plant containers from end to end and has nothing to do with being a slot (col. 7, lines 46-50).

The Examiner didn't even consider ref. 26 as a slot or opening. Clearly from fig. 5 that one can see slot (at ref. 80) where flanges 82 of container 32 fits therein by sliding movement into the opening 79 of slot. As indicated by the claim language, the slot is configured to allow slidable movement, which slot of Roberts is configured to do so. Roberts was solely relied upon for a teaching of another method to hold a plant container 32 on moving structure 8 of a hydroponic system. Roberts was not relied upon for a rotary plant growing apparatus. Container with flange sliding into slot of a holding structure is what the Examiner is relying on from Roberts to substitute the container with flange 22 (see fig. 2 of Sparkes) fitting into opening of a holding structure of Sparkes. This substitution of equivalent would be obvious for one of ordinary skill in the art since both types of holding system would allow a user to, not only hold the container in the holding structure, but allow removal of the container from the holding structure.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn